

SEP 28 2010

JULIA C. CUBLEY, CLERK  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

DONALD WAYNE SHIPE, )  
Petitioner, ) Civil Action No. 7:09-cv-00454  
v. )  
TRACY RAY, WARDEN, )  
Respondent. ) FINAL ORDER  
                          )  
                          ) By: Samuel G. Wilson  
                          ) United States District Judge

In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that Shipe's motion to amend (Docket No. 14) is **GRANTED** and his petition shall be considered as amended; respondent's motion to dismiss (Docket No. 3) is **GRANTED**; and the above referenced 28 U.S.C. § 2254 petition is **DISMISSED** and this action is **STRICKEN** from the active docket of the court.

Further, finding that Shipe has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a certificate of appealability is **DENIED**.

The clerk is directed to send copies of this Order and the accompanying Memorandum Opinion to petitioner and counsel for respondent.

ENTER: This 28th of September, 2010.

  
\_\_\_\_\_  
United States District Judge